IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7931 of 2000

with

SPECIAL CIVIL APPLICATION No 5506 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHBHAI JERAJBHAI HIRANI

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 7931 of 2000
MR GK RATHOD for Petitioner
MR HARDIK C RAWAL for Respondent No. 1

2. Special Civil ApplicationNo 5506 of 2000
MR HARDIK C RAWAL for Petitioner
MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 25/07/2000

ORAL JUDGEMENT

#. I have heard Mr. G.K.Rathod learned counsel on behalf of the petitioner in SCA No. 7931 of 2000 and also Mr. Hardik Raval learned counsel on behalf of the petitioner Gujarat State Road Transport Corporation in SCA No. 5506 of 2000.

#. The Gujarat State Road Transport Corporation (hereinafter referred to as the Corporation) will be referred to as the petitioner and Vallabhbhai Jerajbhai Hirani -the conductor will be referred to as the respondent-workman in this judgment for the sake of convenience and brevity.

#. The respondent-workman was working as a conductor with the petitioner-Corporation. He was appointed in the year 1978. While in service, on 28.12.1982 a surprise check was conducted in the bus. During the surprise check it was found that the respondent-workman had not issued tickets to 11 passengers. The matter was reported to the authorities and the Corporation started departmental proceedings against the respondent-workman. During the inquiry, the charges against the respondent-workman have been proved. The Disciplinary issued show cause notice to the respondent-workman before imposing penalty and after hearing the respondent-workman, the Disciplinary Authority dismissed the respondent from service by order dated 28.9.1984. The respondent-workman filed departmental appeal against his order of dismissal which was dismissed. The respondent-workman thereafter filed Civil Suit No. 892 of 1985 but subsequently said civil suit was withdrawn and the respondent-workman approached the Government for referring the dispute to the Labour Court and the matter was referred to the Labour Court, Junagadh which registered the case as Ref. (LCJ) No. 55 of 1994. The Labour Court after taking evidence both oral and documentary, set aside the order of dismissal imposed by the Disciplinary Authority and directed the petitioner Corporation to reinstate the respondent-conductor on his original post with continuity of service and with 20 percent back wages.

#. Having felt aggrieved by the said judgment and award of the Labour Court, Junagadh dated 8.12.1999 in Ref.(LCJ) No.55 of 1994, the Corporation filed SCA No. 5506 of 2000 for quashing the judgment and award of the

Labour Court. The respondentr-workman also filed SCA No. 7931 of 2000 claiming that he should have been awarded 100 percent back wages instead of 20 percent back wages as awarded by the Labour Court. Since both these SCAs are arising out of one and the same award and the questions of law and fact involved in both these SCAs are the same, they are being disposed of by this common judgment.

#. Mr. Raval learned counsel appearing on behalf of the petitioner-Corporation submitted that the conductor-workman was appointed by the Corporation in the year 1978. Before the present misconduct on 28.12.1982, during his 6 years service from 1978 to 1984 the conductor-workman was warned and cautioned for ten times and out of the aforesaid 10 misconducts, 9 relate to the offence of non issuance of tickets to the passengers and one misconduct relates to unauthorised absence. Mr. Raval submitted that during the surprise checking the respondent-workman was found to have not issued tickets to various passengers. Accordingly Mr. Raval submitted that the respondent-workman is in the habit of not issuing tickets to the passengers and instead, he realises the money from the passengers and misappropriates the same causing loss to the Corporation. Accordingly Mr. Raval submitted that unless deterrent punishment is given for committing such misconducts, the Corporation cannot run its administration. Mr. Raval accordingly submitted that having regard to the past misconduct of the respondent-workman, the Disciplinary Authority has correctly imposed penalty of dismissal from service of the respondent-workman. Mr. Raval submitted that the Labour Court should have considered the past misconducts of the respondent-workman for which he was warned and cautioned for ten times and should not have interfered with the penalty imposed by the Disciplinary Authority. Mr. Raval further submitted that the default card was produced before the Labour Court and the Labour Court has made some observations on the default card. The Labour Court however did not consider the previous misconducts of the respondent-workman and held that these offences are of minor nature. Mr. Raval submitted that non issuance of tickets by the respondent-workman cannot be considered to be a minor misconduct because he was continuously committing such misconducts and inspite of being warned and cautioned for ten times, the respondent-workman has not corrected himself. Mr. Raval accordingly submitted that the Labour Court should not have taken the misconduct of the respondent-workman so lightly. Accordingly it is submitted that the Labour Court has erroneously interfered with the penalty imposed

by the Disciplinary Authority and therefore, the judgment and award passed by the Labour Court should be quashed.

#. Mr. G.K.Rathod learned counsel for the respondent-workman submitted that the offence committed by the respondent-workman cannot be treated as of serious nature because it has not proved by the Corporation that the respondent-workman has misappropriated the money. Mr. Rathod submitted that non issuance of ticket may occur for various reasons. It is submitted by Mr. Rathod that sometimes due to heavy rush of passengers in the bus, it is impossible for the conductor to issue tickets to the passengers. Mr. Rathod submitted that it is the duty of the passengers to tender the ticket amount to the conductor and obtain tickets from him. Non issuance of tickets by the respondent-workman may amount to a minor negligence in duty. But that cannot amount to misconduct or misappropriation of money of the Corporation. But I do not fully appreciate the submission of Mr. Rathod. The respondent-workman has been appointed by the Corporation to realise ticket amount from the passengers. It is his duty to issue tickets to all the passengers and obtain money against such tickets. Non issuance of tickets and non realisation of money from passengers will amount to loss to the Corporation and the Corporation may not be able to bear such misconduct from its own staff. The alleged offence, if does not constitute misappropriation of money but nonetheless it constitute a serious misconduct which causes loss to the Corporation. It further appears that during a short period of 6 years services, the respondent-workman was warned and cautioned ten times by the authorities and out of the aforesaid ten misconducts, nine relates to the non- issuances of tickets to various passengers. Inspite of warning and cautioning the respondent-workman continued his negligence in duties and he has committed the same offence on 28.12.1982 for which departmental proceedings against him has been started by the corporation. Having regard to the offence alleged to have been committed by the respondent-workman and having regard to his past conducts, I am of the view that the Labour Court, Junagadh has taken a too lenient view in the matter of imposing penalty on the respondent-workman. The Labour Court has quashed the order of dismissal and directed for reinstatement of the respondent-workman with 20 percent backwages and continuity of service. It appears that the respondent-workman was dismissed by an order dated 28.9.1984 and thereafter he has filed a civil suit in the year 1985 which he has withdrawn in the year 1994 and in the year 1994 he has moved the Government for referring his dispute to the Labour Court. During all

these ten years, had the respondent-workman taken proper steps when he was dismissed from service, these ten years could have been saved and for the delay of these ten years the Corporation cannot be saddled with the liability of making payment of back wages. Further it is an admitted fact that the respondent-workman has committed misconduct and therefore, he deserves some amount of punishment. Having regard to the submissions made by both the learned counsel for both the parties and after going through the judgment and award of the Labour Court and other relevant papers and documents, I am of the view that withholding of one increment of the respondent-workman with cumulative effect and without awarding any back wages to him will meet the ends of justice. I do not interfere with the order of reinstatement passed by the Labour Court. But reinstatement of the respondent workman with 20 percent back wages will not be a sufficient punishment for the offence committed by the respondent-workman.

#. In the circumstances, one increment of the respondent-workman shall be withheld with cumulative effect and no back wages should be paid to the respondent-workman. However, his reinstatement will be with continuity in service. He shall be reinstated in service with effect from 28.9.1984 and his pay be fixed notionally till the date of his joining in service. However, one increment with cumulative effect will be withheld from the aforesaid notional fixation of pay. Thus SCA No.5506 of 2000 filed by the Corporation is allowed in part and the SCA No. 7931 of 2000 filed by the respondent-workman is dismissed. With the aforesaid observations and modification, Rule is made absolute to the aforesaid extent in SCA No. 5506 of 2000 and Rule is discharged in SCA No.7931 of 2000. No order as to costs in both these SCAs.

(P.K.Sarkar.J)

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